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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. CORY KEI MATSUMOTO, Defendant and Appellant.	C049906 (Super. Ct. No. 05F00179)

In this appeal challenging the denial of defendant Cory Kei Matsumoto's motion to suppress evidence, we reverse because the record is bereft of facts to sustain the search of his motel room by a police officer who entered it through a back window without a warrant or any other lawful basis for entry.

FACTS

Shortly after 11:30 p.m. on December 27, 2004, Sacramento Police Officer Adam Levesque responded to a police dispatch

regarding “some kind of domestic disturbance” at a motel, the only details of which were its location (room 128 of the motel) and the victim (defendant). Upon arrival, the front desk clerk told Levesque room 128 was unoccupied and handed him a card key to check.

Levesque made his way to room 128, where he encountered a small-statured Asian woman in her late 20’s standing in the breezeway and holding a one-year-old child. The woman identified herself as defendant’s wife. She neither claimed nor appeared to be injured.

The woman told Levesque “the last she knew” defendant was in room 130, which was adjacent to room 128. After confirming that room 128 was vacant, and seeing the lights on in room 130, Levesque knocked on room 130’s door for several minutes.[1] Receiving no response, Levesque tried to open the door to room 130 but the handle would not budge.

Levesque returned to the front desk, verified that defendant had rented room 130, and obtained a card key to the room. The card key freed the door handle, but Levesque was stymied by the deadbolt, which had been locked from the inside. Without attempting to elicit consent to enter room 130 from the woman, Levesque left her in the company of two other officers, while he walked around the motel to the back window of room 130.

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[1] Levesque did not say whether he made any sort of announcement while he was knocking.

Levesque slid the unlocked window open, called for defendant, moved the drapes aside, and peered inside, but he neither saw nor heard defendant. Fearing defendant might be lying incapacitated next to the bed or in the bathroom (areas he could not see from the window), Levesque climbed through the window and made his way to the bathroom.

While traversing the living area, Levesque saw check stock, copies of driver's licenses, copies of the front and back of credit cards, and credit related documents strewn on the floor, bed, chair, and desk. Drawing on his experience investigating "[m]ore than five" check fraud or forgery cases, Levesque concluded defendant was attempting to commit such a crime.

After looking in the bathroom, and determining no one else was present, Levesque walked to the front door and let the woman and other officers into the room. Levesque estimated that no more than 15 seconds passed from the moment he entered through the back window until he opened the front door. Subsequent investigation disclosed that several of the documents discovered in room 130 were reported stolen. Levesque admitted he entered room 130 without a search warrant.

Defendant argued the evidence seized from room 130 should be excluded at trial because its discovery depended on a warrantless search that was unsupported by any exception to the warrant requirement. The magistrate denied the motion, alluding to a "protective sweep," concluding Levesque's entry was not "in

any way unprivileged," and ruling that the documents seized were in plain view.[2]

After the complaint was deemed an information, defendant pled no contest to unlawful possession of stolen financial records. (Pen. Code, § 496, subd. (a).) The court suspended imposition of sentence and placed defendant on probation for three years on various conditions including a 60-day jail term.

DISCUSSION

Defendant reiterates his argument that the search of room 130 and seizure of evidence therein was invalid because Levesque entered the room without a warrant and the evidence was insufficient to support an alternative basis for lawful entry. We agree.

"A defendant moving to suppress evidence because it was obtained via an unreasonable, warrantless search or seizure has the initial burden of raising a Fourth Amendment issue by showing that the search or seizure was conducted without a warrant and explaining why it was unreasonable. The burden then shifts to the prosecution to prove reasonableness by a preponderance of the evidence. [Citations.] In reviewing the denial of a motion to suppress, we view the evidence in the

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[2] The suppression hearing did go as advertised. Both the moving and opposition papers agreed that defendant initiated the domestic disturbance call, claiming that the woman was involved with check fraud and planned to lodge a fabricated domestic violence complaint against him. Levesque's testimony did not allude to these circumstances at all.

light most favorable to the magistrate's ruling, and we defer to the court's factual findings if supported by substantial evidence. We then independently review the determination of whether the search or seizure was reasonable in light of those facts. [Citations.]" (*People v. Castro* (2006) 138 Cal.App.4th 486, 492.)

"The presumption of unreasonableness that attaches to a warrantless entry into the home 'can be overcome by a showing of one of the few "specifically established and well-delineated exceptions" to the warrant requirement [citation], such as "'hot pursuit of a fleeing felon, or imminent destruction of evidence, . . . or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling'" [citation].'" (*People v. Thompson* (2006) 38 Cal.4th 811, 817-818.)

The Fourth Amendment protects a hotel guest from unreasonable searches, even those blanketed with the consent of hotel management, since a hotel guest "customarily has no reason to expect the manager to allow anyone but his own employees into his room [citation] . . . ." (*Georgia v. Randolph* (2006) 547 U.S. ___, ___ [164 L.Ed.2d 208, 220-221].) Thus, it is of no moment that the motel clerk gave Levesque a card key to room 130.

Citing *People v. Ray* (1999) 21 Cal.4th 464 (*Ray*), respondent asserts the search was justified under the "community caretaker" exception to the warrant requirement. In that case,

the searching officers received a report that a house was in shambles and the front door had been open all day. The front door was indeed half-open when they arrived, and when they looked inside it was evident the house had been ransacked by burglars. No occupant responded to the officers' repeated knocking and announcements of their presence. The officers entered the house to ascertain whether any burglars remained or if any resident was in need of assistance. (*Ray, supra*, 21 Cal.4th at p. 468.) The trial court concluded the warrantless residential search by police was unlawful and granted the defendant's suppression motion. (*Id*. at p. 469.) The appellate court reversed, concluding that the search was lawful under the exigent circumstances exception to the warrant requirement. (*Id*. at pp. 469-470.) The Supreme Court affirmed, although the six justices forming the majority disagreed on the theory to uphold the search.

In the lead opinion, three justices distinguished two exceptions to the warrant requirement -- the exigent circumstances exception, and the community caretaking exception. The lead opinion observed that police have a host of duties unrelated to criminal investigation, which courts refer to collectively as "community caretaking functions." (*Ray, supra,* 21 Cal.4th at pp. 472, 467.) "Under the community caretaking exception, circumstances short of a perceived emergency may justify a warrantless entry, including the protection of property, as 'where the police reasonably believe that the

premises have recently been or are being burglarized.' [Citation.]" (*Id.* at p. 473; see *id.* at p. 471.)

The lead opinion explained that "[a]lthough this court has not articulated these principles in terms of 'community caretaking functions,' it has long recognized that '[n]ecessity often justifies an action which would otherwise constitute a trespass, as where the act is prompted by the motive of preserving life or property and reasonably appears to the actor to be necessary for that purpose. [Citations.]' [Citation.]" (*Ray, supra,* 21 Cal.4th at p. 473.) For example, "[i]n *People v. Hill* [(1974) 12 Cal.3d 731] at pages 754-755, we relied on *People v. Roberts* [(1956)] 47 Cal.2d 374, in again concluding, 'A warrantless entry of a dwelling is constitutionally permissible where the officers' conduct is prompted by the motive of preserving life and reasonably appears to be necessary for that purpose. [Citations.]' In *Hill,* the officers reasonably believed someone within the premises might require aid and 'entering . . . was the only practical means of determining whether there was anyone inside in need of assistance.' [Citation.]" (*Ray, supra,* 21 Cal.4th at p. 474.)

After reviewing case law from other states, the lead opinion in *Ray* concluded, "[t]he appropriate standard under the community caretaking exception is one of reasonableness: Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?" (*Ray, supra,* 21 Cal.4th at pp.

476-477.) Applying these principles to its facts, *Ray* declared that "[w]hile the facts known to the officers may not have established exigent circumstances or the apparent need to render emergency aid, they warranted further inquiry to resolve the possibility someone inside required assistance or property needed protection. In such circumstances, 'entering the premises was the only practical means of determining whether there was anyone inside in need of assistance [or property in need of protection].' [Citations.]" (*Ray, supra,* 21 Cal.4th at p. 478.)[3]

In the present case, application of *Ray* does not assist respondent, since the few known facts would not have caused a

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[3] The lead opinion in *Ray* also emphasized that application of the community caretaking exception is permitted only when officers are *not* engaged in searching for evidence or perpetrators of a crime because "'[T]he defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police.'" (*Ray, supra,* 21 Cal.4th at p. 471.) Accordingly, the exception cannot apply when officers are motivated, even in part, by a search for evidence of a crime: "'[C]ourts must be especially vigilant in guarding against subterfuge, that is, a false reliance upon the [personal safety or] property protection rationale when the real purpose was to seek out evidence of crime.' [Citations.] 'The entry cannot be made on the pretext to search for contraband or illegal activity rather than to look for [burglary] suspects and to preserve an occupant's property. [Citation.]' [Citation.] In this regard, the trial courts play a vital gatekeeper role, judging not only the credibility of the officers' testimony but of their motivations. Any intention of engaging in crime-solving activities will defeat the community caretaking exception even in cases of mixed motives." (*Id.* at p. 477.)

prudent and reasonable officer to perceive a need to climb into defendant's motel room to discharge his duties properly. From what appears of record, all Levesque knew was that an unknown caller had reported "some kind of domestic disturbance" in room 128 of a motel and that defendant was the victim. Investigation showed room 128 was vacant, but a woman carrying a young child and claiming to be defendant's wife said the last she saw defendant he was in room 130. The record does not show the woman was armed, injured, agitated, or had recently been involved in a domestic disturbance of any kind, let alone one in which she inflicted a life-threatening injury on defendant. These facts would surely have caused a reasonable and prudent officer to question the accuracy of the dispatch call, the veracity of the caller who reported the disturbance, or both.

From the information Levesque testified he knew prior to climbing through the window, he could virtually eliminate the possibility that the silence emanating from room 130 denoted an individual in need of assistance. The much more likely inference to be drawn from the absence of any response to Levesque's knocking is that defendant was reluctant to involve himself with a police investigation (assuming Levesque announced his status) and the invasion of personal privacy that process would entail, and he had either fled or was attempting to exercise his right to be left alone. Defendant's failure to respond also would have been a natural reaction if he was sharing the company of an illicit companion. Another

possibility is that the woman with the child was not who she claimed she was and that defendant climbed out of the back window to evade her. While this may seem implausible, the record does not indicate that she had checked into room 130 with defendant, or that she had authority to demand entry. In addition, Levesque neither sought nor assumed he had the woman's consent to search room 130. The search and seizure simply cannot be upheld on the basis of the community caretaking exception to the warrant requirement.

Having failed to pass muster under the forgiving community caretaker exception standard, the search fares no better pursuant to the "[n]umerous state and federal cases [that] have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. . . ." (*Mincey v. Arizona* (1978) 437 U.S. 385, 392-393 [57 L.Ed.2d 290, 300], fns. omitted; *Georgia v. Randolph, supra,* 547 U.S. ___, ___, fn. 3 [164 L.Ed.2d at p. 221].) For the reasons we have expressed, it was unreasonable to believe that defendant was in need of immediate aid.

The cases cited by respondent for this exception do not dictate a contrary result. In *People v. Ammons* (1980) 103 Cal.App.3d 20, 23-25, the defendant's employer had requested police assistance after defendant was several hours late for work and had not called in, which was quite out of character for him. When the officer arrived at the house, a dog was barking

inside, and the officer saw dog feces on the carpet, but no one answered the door, all of which strongly suggested to the officer that the defendant might be in grave danger. In *People v. Higgins* (1994) 26 Cal.App.4th 247, 249-252, officers responding to a domestic violence call overheard a fight between a man and a woman, observed a bruise on her face, saw that she was acting strangely, and did not want them to enter, from which the officers reasonably inferred she was the victim of domestic violence. (*Id*. at pp. 254-255.) In the present case, far fewer facts were adduced, and none suggested defendant was in any sort of physical danger.

Although respondent does not raise it, the court also mentioned that the search was a valid "protective sweep." The concept does not apply to the present facts, however. In *Maryland v. Buie* (1990) 494 U.S. 325 [108 L.Ed.2d 276], the Supreme Court articulated the parameters of a limited search of the premises incident to a lawful arrest, or "protective sweep," for the purpose of officer safety: "[W]e hold that there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." (*Id.* at p. 334 [108 L.Ed.2d at p. 286].) No facts supported such a belief in the present case.

For all of these reasons, we conclude the search of room 130 and seizure of incriminating evidence therein cannot be

sustained on the limited record presented. The suppression motion should have been granted.

DISPOSITION

The judgment (order granting probation) is reversed, and the trial court is directed to enter a new and different order granting defendant's suppression motion.

BLEASE, Acting P. J.

We concur:

ROBIE, J.

BUTZ, J.